

REMARKS

The Examiner has rejected claims 27, 28 and 30-47 on the ground of non-statutory, obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. patent 6,682,618. It is respectfully submitted that the rejection is incorrect and should be withdrawn.

The present application is a divisional application of U.S. application serial number 09/723,643, now U.S. patent 6,658,835. After the original filing of U.S. 09/723,643, a restriction requirement was issued dated September 27, 2002, forming three groups of claims. The first group of claims was drawn to an untwisted wrapped singles yarn (these claims were granted in U.S. patent 6,658,835). The second group of claims was drawn to the Saxony carpet untwisted wrapped singles yarn and Saxony carpet of currently pending claims 27 and 28. The third group of claims was drawn to a method of making a Saxony carpet (said claims are currently being prosecuted as part of U.S. application serial number 10/631,320). Upon issuing that restriction requirement, the claims of groups 1-3 were held to be patentably distinct from each other and non-obvious variants.

Particularly, the non-Saxony untwisted singles yarn of claim group 1 was held to be patentably distinct from the Saxony carpet untwisted wrapped singles yarn because inventions 1 and 2 were mutually exclusive species in an intermediate-final product relationship. The restriction requirement directly states that the invention of group 1 "is deemed to be useful as reinforcement yarns in composite materials or to make loop pile carpets, or other style carpets instead of Saxony carpets and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants". Group 1 was selected for examination without traverse.

The Examiner is now rejecting the present claims on the grounds of non-statutory, obviousness-type double patenting over another patent from the present inventor, Mr. Charles E. Bowers, U.S. patent 6,682,618. However, just like group 1 described above, U.S. patent 6,682,618 fails to claim Saxony yarns. It is respectfully submitted that it has

already been conclusively established on the record that Saxony yarns are patentably distinct and non-obvious compared to non-Saxony yarns, because the non-Saxony yarns are "useful as reinforcement yarns in composite materials or to make loop pile carpets, or other style carpets instead of Saxony carpets". The present double patenting rejection is therefore in conflict with the conclusions drawn in the restriction requirement. It is not understood how the restricted claims of group 1 (granted in U.S. patent 6,658,835) can be established as patentably distinct and non-obvious compared to the currently pending claims, while the more significantly different claims of U.S. 6,682,618 can be considered non-patentably distinct obvious variants of the current claims. It is urged that this inconsistency is further evidence that the double patenting rejection is improper.

As previously submitted, the presently claimed invention is further distinguished from the claims of U.S. patent 6,682,618 for the following reasons. As the Examiner points out, a nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy and which is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinguishing from claims in a first patent. Determining if a double patenting rejection is appropriate involves the answers to the following inquiries: Is the same invention being claimed twice? If not, are the inventions directed to the same inventive concept with a change in scope or directed to obvious variations of the same inventive concept?

Regarding the first query, the Examiner argues that although the conflicting claims are not identical, the same invention is being claimed twice because the two sets of claims are not patentably distinct from each other. However, it is urged that the same invention is clearly not being claimed twice. Double patenting rejections are based solely on a comparison of claims. Accordingly, the only text that the Examiner is legally permitted to reference in applying a double patenting rejection is the text of the claims. Looking only at the text of the claims from the 6,682,618 patent, it is respectfully asserted that the rejection is improper at first glance because claims 1-5 of U.S. patent 6,682,618 are process claims while the claims of the present invention are article claims. More

particularly, the claims of this invention are directed to an untwisted wrapped singles yarn and a Saxony carpet manufactured from an untwisted wrapped singles yarn, while the claims of U.S. patent 6,682,618 are directed to a process for producing a yarn suitable for tufting. The same invention is not being claimed twice and the claims of this invention and claims 1-5 of U.S. patent 6,682,618 are patentably distinct from one another. Accordingly, the first query is not satisfied and the double patenting rejection is incorrect.

Regarding the second query, it is respectfully submitted that the claimed invention is not an obvious variant of the claims of U.S. patent 6,682,618. The presently claimed invention relates to a Saxony carpet untwisted wrapped singles yarn. More particularly, the invention pertains to a Saxony carpet untwisted wrapped singles yarn comprising: a) a core strand comprising a member selected from the group consisting of a sliver and a bulked continuous filament yarn; and b) a wrapper yarn comprising a member selected from the group consisting of a spun staple yarn and a continuous filament yarn; wherein said wrapper yarn comprises at least one base synthetic fiber material selected from the group consisting of polyester, polyolefin, polyamide, and a heat activated binder fiber having a melting point at least 20°C lower than the base synthetic fiber. The invention also pertains to Saxony carpets which are formed using untwisted wrapped singles yarns.

Applicant respectfully urges that the presently claimed invention differs from claims of U.S. patent 6,682,618 because U.S. patent 6,682,618 fails to claim Saxony carpet untwisted wrapped singles yarns, particularly comprising a base synthetic fiber wrapper yarn containing heat activated binder material. Such is disclosed in the claims of U.S. patent 6,682,618.

Claim 1 of the applied reference claims:

1. A process for producing a yarn suitable for tufting, said process comprising the steps of:
 - a. forming a bundle consisting essentially of a first base fiber prior to spinning, said first base fiber being selected from the group consisting of polyamides,

polyesters, polyolefins, cotton and wool;

- b. ring spinning or wrap spinning the bundle of fiber with a second fiber to form a yarn, said second fiber being twisted or wrapped uniformly around the bundle of fiber and consisting essentially of a blend of a second base fiber and a heat-activated binder material having a melting point lower than that of said bundle of fiber, said yarn comprising 0.1 to 12 weight percent of the binder material;
- c. heating the yarn sufficiently to melt the binder material; followed by
- d. cooling the yarn to solidify the binder material.

In comparison, claims 27 and 28 of this invention claim:

27. A Saxony carpet untwisted wrapped singles yarn comprising:

- a. a core strand comprising a member selected from the group consisting of a sliver and a bulked continuous filament yarn; and
 - b. a wrapper yarn comprising a member selected from the group consisting of a spun staple yarn and a continuous filament yarn;
- wherein said wrapper yarn comprises at least one base synthetic fiber material selected from the group consisting of polyester, polyolefin, polyamide, and a heat activated binder fiber having a melting point at least 20°C lower than the base synthetic fiber.


28. A Saxony carpet manufactured from an untwisted wrapped singles yarn, wherein the untwisted wrapped singles yarn comprises:

- a. a core strand comprising a member selected from the group consisting of a sliver and a bulked continuous filament yarn; and
 - b. a wrapper yarn comprising a member selected from the group consisting of a spun staple yarn and a continuous filament yarn;
- wherein said wrapper yarn comprises at least one base synthetic fiber material selected from the group consisting of polyester, polyolefin, polyamide, and a heat activated binder fiber having a melting point at least 20°C lower than the base synthetic fiber.

U.S. patent 6,682,618 claims a process for producing a twist set yarn where a heat activated binder material is incorporated in a wrapper yarn. The applied reference does not claim the formation of a Saxony carpet untwisted wrapped singles yarn or a Saxony carpet using untwisted wrapped singles yarns. Indeed, as discussed above, the reference does not claim Saxony carpeting or yarns for the formation of Saxony carpeting at all. In contrast, the claimed invention is directed solely to the formation of Saxony carpet using untwisted wrapped singles yarns that are not twist set. Therefore, the claims of the invention and the claims of the U.S. patent 6,682,618 reference differ significantly, and the second query is not satisfied. For all the above reasons, claims 27, 28 and 30-47 are urged to be patentable over the claims of U.S. patent 6,682,618. Accordingly, it is respectfully submitted that the double patenting rejection is improper and should be withdrawn. Such action is respectfully requested.

The undersigned respectfully requests re-examination of this application and believes it is now in condition for allowance. Such action is requested. If the examiner believes there is any matter which prevents allowance of the present application, it is requested that the undersigned be contacted to arrange for an interview which may expedite prosecution.

Respectfully submitted,



Richard S. Roberts
Reg. No. 27,941
P.O. Box 484
Princeton, New Jersey 08542
(609) 921-3500
Date: June 5, 2006

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office (FAX No. (571) 273-8300) on June 5, 2006



Richard S. Roberts
Reg. No. 27,941